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ABSTRACT

After a preface in which Judge Robert Landry cites the importance of the Galt Decision, the paper summarizes the rights of students in elementary and secondary schools. This is presented through case histories. The decisions are grouped into the categories of freedom of expression, search and seizure, dress and grooming, invasion of privacy, and discipline. The rights of students in programs of teacher education are then discussed in ten parts: the right of equal opportunity; the right of freedom of assembly and association; the right of petition; the rights of due process and equal protection; the rights of speech and press; the right of freedom of religion; the rights of person, property, and privacy; the right to dissent; the right against self-incrimination; and the right to trial by jury of peers. The final section presents a Bill or Rights for future teachers. Student teachers' and interns' rights are elaborations and extensions of the previous analysis on the rights of children and youth in lower schools. (Author)

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Students' Rights: A Guide to the Rights of Children, Youth and Future Teachers

by

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School of Education
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Special Introduction

by

Robert W. Landry
Circuit Judge
State of Wisconsin

Descriptors: Students' Rights; Student Teachers' Rights; Interns' Rights; Teacher Education; Educational Change; Teacher Education Curriculum.

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After a preface in which Judge Robert Landry cites the importance of the Gault Decision, the paper summarizes the rights of students inelementary and secondary schools. This is done on a case history basis; decisions are grouped into the categories of freedom of expression, search and seizure, dress and grooming, invasion of privacy and discipline. The rights of students in programs of teacher education are then discussed in ten parts: the right of equal opportunity; the right of freedom of assembly and association; the right of petition; the rights of due process and equal protection; the rights of speech and press; the right of freedom of religion; the rights of person, property and privacy; the right to dissent; the right against self-incrimination; and the right to trial by jury of peers.

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PREFACE

When Professor Haberman asked me to read his manuscript, I felt uneasy because I knew the subject matter was extensive, complex and technical. I had tried several cases involving the rights of students and served as an arbitrator during five uninterrupted days in a teachers' contract dispute, so I was acutely aware of the developing state of the law concerning these problems. When I asked some students what they thought of the way the present system of education operated they vociferously responded that schools refused to regard students as human beings, manipulating and abusing them with no real opportunity for the students to object or protest. When I asked some businessmen the same question, they glumly shook their heads and complained that in the old days students were put in their places and schools were really schools where youngsters actually learned something.

These two diverse responses may not be typical, but they represent the great spread of opinion concerning the fundamental nature of one of our nation's most important institutions. Vague misconceptions concerning the state of the law in this area are universal, with the attendant effect of deteriorating and undermining public confidence in education and destroying initiative and the spirit of inquiry among students.

Professor Haberman's guide fulfills an urgent need to dispel the doubts and misgivings of students, teachers, and

the public generally about the ability of our public educational system to perform its proper function and a scheme of freedom with responsibility under law. His overview of some of these problems is a significant pioneering effort to synthesize the legal relationships that exist today. He also accurately indicates what I observe to be the trend of change toward a recognition of broader freedom of expression and greater respect for individuality.

Professor Haberman goes further and proposes rights and responsibilities in various relationships which have not as yet been spelled out either in contracts, statutes, or common law, but he is consistent in his position of advocating change in a tradition that is part of the Wisconsin legacy, that of instilling in the spirit of man the desire to seek truth through freedom. That tradition was enunciated seventy-five years ago by the University of Wisconsin Board of Regents:

> "Whatever may be the limitations which trammel inquiry elsewhere, we believe that the great State University of Wisconsin should ever encourage that continual and fearless sifting and winnowing by which alone the truth can be found."

As modern as this may sound, it is but an echo of a previous voice which earlier declared that the schools, while teaching essential skills, providing a background of general knowledge, and instilling a desire to learn, also served as a training center for the youth of America to live responsible lives in a free democratic society. In fulfilling this function, it was necessary to adopt rules and establish relation-

ships compatible with teaching that lesson.

In 1859 the Supreme Court of Vermont rejected the authoritarian claim of the school to dominate the student under the guise of being in the situation of a lawful father of the child, but the doctorine was not laid to rest until 1967 when the Supreme Court in Re Gault said:

> "The consent of parens patriae proved to be of great help to those who sought to rationalize the exlusion of juveniles from the constitutional scheme . . . but its meaning is murky and its historic credentials are of dubious relevance."

Professor Haberman had undertaken an ambitious task. The first section, consisting of an overview of the rights of students on a case history basis, is a reliable summary, but, as he pointedly states, many of these cases cover unique circumstances from which it is difficult to generalize. Most of the citations are decisions of trial courts which may be persuasive on other judges but they do not constitute a rule of law universally accepted. As it is with other American institutions, the cake is still in the oven.

The last section deals with sophisticated concepts of teacher training and the relationship of the teacher with school administration. While the scheme or blueprint advocated by Professor Haberman is beyond my professional limits, it seems only logical that if it is desirable to establish a system of education that gives full recognition

to the psychological and political development of students by not repressing conduct which is unharmful to the educational program, it follows that the teachers must be treated the same way and taught to cope with the responsibilities of freedom.

Robert W. Landry,
Circuit Judge.
State of Wisconsin.

Student-teachers and interns have a special responsibility in regard to students' rights. The special nature of their responsibility derives from the fact that most schools, administrators and teachers do not now function with adequate knowledge regarding their students' rights. This means that student teachers cannot simply plan on learning principles and practices through the usual processes of observation and participation. Further, student teachers may have the added responsibility of helping the teachers and administrators in their cooperating schools to familiarize themselves with students' rights and to work with them in developing practices which support these rights.

The literature in this area is expanding rapidly. There are local sources which are readily accessible[1] and national sources which will provide more comprehensive background literature.[2]

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[1] Freedom through Equality Inc. A Handbook for Parents. 152 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

[2] American Civil Liberties Union, 156 Fifth Avenue, New York, New York 10010.

The overview which follows is not intended to serve as an exhaustive review. It describes selected decisions which are simply indicative of current trends in the area of students' rights. Following this survey there will be a discussion of the rights of student teachers and interns in programs of teacher education. It should be obvious that the drive to secure equality of opportunity and expression for pupils in schools must be undergirded by a parallel effort to provide future teachers with comparable and supporting rights.

The vast majority of rules by which schools operate are either uncodified traditions, administrative rulings or school board policies. There is no basis for assuming that these rules inevitably support the development of free men in a free society. As school rules become openly contested, there is a growing body of information to support the concern that much of what occurs in many schools is actually in violation of the students' rights. From an educational point of view, this situation is more critical than even the liklihood that students are being denied varying degrees of freedom in particular school situations. Since it is

in the process of interpersonal interaction that students develop values and life commitments, these rules for operating the schools are of infinitely greater educational significance than any formal studies. Free men are not developed simply from the knowledge gained in the required texts and regular classes; they grow and emerge from the daily involvements with freedom -- and the lack of it -- that they experience in the hour-by-hour process of schooling over a twelve-year period. It is not only legal erudition that motivates a federal judge to rule that United States citizens not be allowed to travel to Cuba; he, like the rest of us, needed someone else's permission to urinate up through age eighteen.

Finally, before reviewing the rights of students it is important to underscore that there are two major impositions. First, by law, all youngsters must attend school until they reach a certain age. Second, "appropriate" standards of behavior can be enforced. The courts have always recognized the need of states and school authorities for comprehensive administrative regulations to maintain reasonable conduct in the schools, as long as the regulations are consistent with fundamental constitutional safe-

guards. Controversy has more often focused on the differences between parent-teacher-student-administrator and school board members regarding "reasonable conduct" when the real issue has been, "as long as the regulations are consistent with fundamental constitutional safeguards."

The great difficulty in dealing with students' rights is that the preponderance of rules by which schools are managed are traditions which cannot be contested legally since they exist in the school culture and not on paper. Everything from gum chewing, to waiting outside in the rain before the building can be "officially" opened is more likely to be done as a result of school traditions than as an implementation of a school board policy or a written administrative regulation. Recognizing, therefore, that the legal approach can only deal with the top of the iceberg there is still great value to be gained from an analysis of the official, written and legal prescriptions. Aligning even these limited number of regulations with the higher laws of humanity and the American constitution will be an important step forward.

Students' Rights in
Lower Schools

The law regarding student rights is expanding at a phenomenal rate. The once traditional reluctance of the courts to exercise their power in the educational sphere is fast becoming a thing of the past. Courts are being asked with increasing frequency to ascertain the nature and consequences of rights which no one (not even students) imagined students possessed only a few years ago. This extremely rapid development has meant that the law is still very much in a state of flux -- relatively few general principles and even fewer concrete rules have yet emerged.

The most fundamental legal concept regarding student rights is the notion that students, indeed juveniles in general, are as entitled to the protection afforded by the Constitution as their elders. The Supreme Court has squarely held:

> Whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.
> In Re Gault, 387 U.S. 1, 13 (1967)

This basic principle furnishes the foundation for most current litigation regarding student rights. In most instances,

however, the exact nature and scope of the rights accorded students by the Constitution are still being worked out on a case by case basis.

No special limitations are imposed on students, except that in the exercise of his civil rights no student may endanger the health or safety of other people or imminently disrupt the educational process. Otherwise, students' rights are broadly analagous to adults'.

Freedom of Expression. This area includes publications, outside speakers and symbolic speech. In each of these areas, the embarrassing realization that the law is on the pupils' side actually discourages many student activists from raising new cries for "revolution against an oppressive and hypocritical society." Instead of planning riots, more and more student leaders are learning about their rights, then vigorously defending them in hearings and courts of law. With an increasing number of cases being decided in their favor, students are being forced to the astonishing discovery -- for them, at least -- that reform can be achieved within the system.

Any question of student expression in schools must begin with the United States Supreme Court decision in Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). In that case, the Court held that, in the absence of a showing that the activity would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school, it was unconstitutional for a school district to suspend students for wearing black arm bands to school as a protest against the Viet Nam war.

The Court pointed out that the "school officials banned and sought to punish (the students) for a silent, passive expression of opinion, unaccompanied by a disorder or disturbance on the part of (the students). There is here no evidence whatever of (the students') interference, actual or nascent, with the school's work or (or) collision with the rights of other students to be secure and to be let alone. Accordingly, the case does not concern speech or action that intrudes upon the work of the school or the rights of other students." The Court acknowledged that some school officials had expressed their fear of a disturbance but held that this

"undifferentiated fear or apprehension of disturbance" was not sufficient to prevent the students from wearing arm bands.

The essence of the Court's opinion is contained in the statement:

> "In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved."

In other words, the issue of student expression must begin with the understanding that students must be allowed to participate in and initiate expression in school. They cannot be seen merely as the passive recipients of what the school wants to teach them. In order to curtail this ~~burden~~ right there must be sufficient facts shown that would reasonably lead the school authorities "to forecast substantial disruption of or material interference with school activities . . . or intru(sion) into the lives of others." Moreover, as lower courts after Tinker have held, the fact that a teacher or administrator will have to back down and lose face is not a basis for denying student rights, even though the teacher or administrator argues that his loss of face will impede appropriate school functions. Discipline for its own sake is

invalid.

It is important to note that in this case, the Court for the first time noted that the First Amendment is applicable to public elementary and secondary students.

Other cases support the Tinker position; for example, in Burnside v. Byars, 363 F2d 744 (5th Cir 1966) the Fifth Circuit struck down a high school regulation prohibiting students from wearing "freedom buttons", noting that school authorities could only impose regulations necessary for maintaining an orderly forum for classroom learning and finding that "mild curiosity" over the buttons did not constitute material interference with school decorum.

It must be noted that while the majority of Court opinion is clearly on the side of increased freedom of students' symbolic expression, there have been some decisions on the other side. A federal district court in Cleveland upheld a school board ruling banning political buttons in a racially integrated high school where the school board acted in order to avoid provocations by

offensive buttons in a situation where there was racial tension and there had been instances of racial violence. Guzick v. Drebus, 305 F. Supp. 472 (N.), Ohio 1969.

A second example of restriction was in Blackwell v. Issaquena County Board of Education, 363 F2d 749 (5th Cir 1966). Here the Court upheld a restriction on the wearing of student buttons when it found an "unusual degree" of boisterous conduct was the result of displaying the buttons.

A third example of a more conservative decision occurred in 1970. An attempt by secondary school students to utilize the flag as symbolic speech was struck down ~~last Spring~~ in LaPolla v. Dullaghan, #4908/70, 38 LW 2670 (NY Sup Ct Westchester), in a suit brought by a member of a local Veterans' group to prevent a plan agreed upon by the principal and students of Peekskill High School to fly the school flag at half mast in memory of the four students who had recently been killed at Kent State University. The court held that the flag should not be lowered to express a political concept "no matter how valid the cause or who is involved."

Except for the decision dealing with displaying the flag, it should be noted that Courts are extremely reluctant to any way interfere with the students' rights to symbolic expression. When they do decide against symbolic expression, it is inevitably because of a clear and present danger of immediate violence -- and not the traditional school reason of a vague need for respect and discipline. The important point is that it is not the responsibility of the students but the responsibility of the school authorities to prove that there is a clear and present danger to the physical safety of others.

Freedom of expression deals with more than symbolic speech and involves securing outside speakers and demonstrating. There has been relatively little litigation specifically dealing with outside speakers and student demonstrations on the secondary school level. However, the view taken by the courts in cases concerning colleges and universities probably indicated the position which would be taken should such litigation arise. Campuses are treated much like other public facilities with regard

to speeches and demonstrations. "Reasonable" and "neutrally applied" rules may be established allocating facilities and regulating time, place and duration. See eg. Cox v. Louisanna, 379 U.S. 536 (1965). However, absolute bans on demonstrations and speakers without prior approval of school authorities have been struck down. See Hammond v. South Carolina State College, 272 F Supp 947 (DSC 1967).

Thus, as with student publications, the key legal issue is not the nature of the particular view point being expressed, but the physical consequences of the manner in which it is presented: does it constitute a clear and present danger to the safety and/or bona fide educational function of the school sufficient to warrant curtailment of the First Amendment rights.

Of particular interest is the case of Selden v. Childress, et. al., CA 349-70 (ED Va.), which promises to yield a ruling directly concerned with secondary schools. Citing a Henrico County School Board ruling prohibiting outside speakers and guests at school without prior administrative approval, school authorities refused to permit the Executive Director of the ACLU of Virginia to speak at

a student council leadership conference. The results of this suit, a constitutional challenge to the administrative rule, may well furnish an important precedent for the entire field. *

Actually, the most active area for students' freedom of expression seems to be in the area of school newspapers and here again, the Courts are quite clear in the majority and weight of their decisions.

Decisions dealing with the content and distribution of student newspapers, literary magazines, pamphlets, etc. have held almost uniformly that such publications may be restricted only if substantial disruption of or material interference with school activities in fact occurs or could reasonably have been forecast.

This means that school authorities must ignore the particular moral code or political viewpoint expressed by the students and limit their consideration entirely to the disruptive potential of the publication involved. The Supreme Court has specifically rejected the earlier notion that there is a particular class of student expression which per se justifies immediate disciplinary action. Scoville v. Board of Education of Joliet Township High

*This suit was dropped. Students may now select their own speakers as long as they inform the administration within a time deadline. Future arbitrary actions by principal will be appealed to the school board.

School District 204, 286 F. Supp. 988 (N.C. Ill. 1968), aff'd 415 F. 2nd 860 (7th Cir. 1969), aff'd 393 U.S. 503 (1969).

The courts are now busy marking the exact boundaries of the above principle, wrestling with questions such as: what constitutes "substantial disruption" of a school activity; under what circumstances it may be "reasonably forecast"; whether anything which occurs on school grounds must be defined as a "school activity."

Some recent decisions in this area include:

Dickey v. Alabama Board of Education, 273 F. Supp. 613 (M.D. Ala. 1967). Student Editor can't be punished for refusing to obey a rule prohibiting criticism of the state government by his paper.

Eisner, et. al. v. Stamford Board of Education, et al., Civ. No. 13220 (D. Conn. July 2, 1970). Rule prohibiting the distribution of a student paper at a public high school unless first submitted to school authorities for approval of contents constitutes an unconstitutional "prior restraint" upon speech and press in violation of the First Amendment.

Zucker v. Panitz, 68 Civ. 1339 (S.D. N.Y., May 15, 1969). Student paper has the right to publish a paid advertisement opposing the war in Vietnam even though school authorities feel the paper should be concerned primarily with school related issues and should accept only commercial ads. To permit only commercial ads would unconstitutionally discriminate against non-mercantile ads and would violate the students' First Amendment right to express themselves on "matters intimately related to them through traditionally nondisruptive modes of communication."

Of most importance is the decision of the federal district court in the Northern District of California in the case of Rowe

v. Campbell Union High School District. In that case, the court held unconstitutional sections 9012 and 9013 of the California Educational Code and enjoined the school board from preventing the students there involved from distributing a newspaper on campus. In the Campbell Union case the court stated the following six principles which Tinker established:

1. Students are "persons" within the meaning of the Constitution and are possessed of fundamental rights which are not lost in school.

2. Students are not the "closed circuit" recipients of only that which the state wishes to communicate: they may not be confined to officially-approved sentiments.

3. Student freedom of speech includes personal inter communication of controversial ideas.

4. School officials have the burden of showing constitutionally-valid justifications for limitations on student speech.

5. A generalized fear or apprehension of a disturbance is not a constitutionally adequate justification. A desire to avoid the expression of controversial or unpopular ideas or the discomfort and unpleasantness which accompany them is not a constitutionally adequate justification.

6. School officials must demonstrate that the prohibited speech would have actually caused substantial and material disruption of, or interference with, classwork, or with the requirements of discipline appropriate to the operation of the school. Reasonable time, place and manner regulations regarding expression of ideas orally or in writing are permissible, as they are in any other public institution or facility.

Based on these principles, the court held that Sections 9012 and 9013, that prohibit any circulation on school grounds of publications "of sectarian, partisan or denominational character" or the circulation of "propaganda," are unconstitutional. The court based this on the fact that these statutes are so broad that they would prohibit such innocent things as a leaflet explaining one's First Amendment rights or one urging students to write their Congressmen on a matter of current interest; political campaigns, literature; and even, perhaps, an article decrying environmental pollution.

The court rejected the argument that the propaganda prohibition during school hours and one hour before and after was a proper rule regulating time, place and manner so as to prevent disruptions. The court stated that the prohibitions were too extensive for that. They did, however, recognize that distribution could be reasonably regulated as to time, place, and manner so as to prevent disruption.

The courts also rejected the contention that these very broad prohibitions were justified by the immaturity of students. The court, however, did recognize that obscenity could be banned and that student "immaturity is a valid reason for certain specific well-defined limitations on high school student rights. . ."

Finally, the court rejected the "captive audience" argument in the case of literature distribution because no student was forced to take any of the publications. While the court did not discuss this, it should be noted that the problem of a captive audience, i.e., students forced to come to school who are then involuntarily viewers of material they consider offensive, is much greater where the material is posted in school in a place where students normally go. Such a consideration might be part of the Tinker rule allowing reasonable regulations to prevent intrusion into the lives of others. Moreover, the court in Campbell was not faced with an argument that posters in an area might effectively preclude a group of students from participating in school sponsored or authorized activities there. Such a situation might also create a proper basis for reasonable school regulation.

The court in Campbell also considered and rejected disruption arguments on the facts of that case. The fact that students might think about the leaflets during class obviously is not a basis for censorship. Nor can material be banned simply because it criticizes the faculty and administration.

The Campbell decision is significant because, in the opinion, the court stated that prior censorship, i.e., school administrators' review of material prior to circulation or posting, was proper to a limited extent, but did not specify the details. In a later, supplemental, opinion the district court retracted and held prior censorship to be invalid.

The real question, of course, is whether student newspapers actually do enjoy the almost complete freedom that a study of law might lead one to believe. Here again is where tradition and professional ignorance exerts a greater control over action than any legal precedence. Most official school papers are still subject to censorship; the principal or faculty adviser can ban

objectionable material. And many underground papers are effectively suppressed by rules that disallow their circulation within the school. Fully half of all the secondary schools in the country, according to estimates by the National Association of Secondary School Principals, have made efforts of this kind to bury underground papers produced out of school on the students' own initiative--and frequently, of course, at strong odds with the administration. The question: "Is this type of suppression legal?" can be answered with a categorical "No!"

The present status of freedom of expression in the schools can best be summarized by the high status being afforded the Tinker decision in the several years since its issuance. A number of lower courts have referred to Tinker and in so doing have continued to place the responsibility for proving any anticipated disruption (an almost impossible task) on the school authorities. In a leading case, the United States Court of Appeals for the Seventh Circuit held that Tinker precluded a school board from banning the distribution by students of "underground" newspapers in school where the

place, time and manner of distribution was not such as to disrupt classes. The only complaint that the school authorities had of the paper was that it criticized school officials in intemperate language and used other offensive language. The court held that this was not sufficient to justify censorship in the absence of the Tinker requirement of "a factually-based forecast of substantial disruption or interrusion into the lives of others."

It goes without saying that since the Bill of Rights applies to youngsters as well as adults that its safeguards are also relevant. No student publication has total freedom, of course; all must abide by the laws of responsible journalism, and student editors who print libelous or obscene material are laying themselves open to disciplinary action.

Search and Seizure. This is perhaps one of the most unexplored facets of student rights. There have been extremely few court decisions bearing on the extent to which the Fourth Amendment guarantee against unlawful search and seizure protects students and

their property on secondary school grounds.

Most of these decisions have been unfavorable to the student, tending toward the view that because school authorities are acting in loco parentis they can waive Constitutional safeguards otherwise accorded individuals. In Donaldson v. Mercer, — Cal App 2d —, 3 Civil 1918 (Dist Ct App Feb 1969) for example, the court concluded that a student's locker could be searched at any time, without a warrant and without consent, and that contraband found in the locker could be used in proceedings to declare the student a ward of the juvenile court.

There is a good chance that this situation will change in the not too distant future as a result of the long fought case entitled Overton v New York, 20 NY 2d 260, 283 NYS2d 22 (1967). The case involves the discovery of marijuana in a high school student's locker when a vice-principal opened the locker at the request and in the presence of local police who had first shown him a warrant. Although it later developed that the warrant was invalid, the N. Y. Court of Appeals (court of highest jurisdiction in N. Y.) sustained the validity of the search based on the vice-principal's 3rd party consent. The U.S. Supreme Court vacated that decision and remanded

the case to the N.Y. Courts for futher consideration in light of Bumper v. North Carolina, 391 US 543, which held:

> "when 'consent' has been given only after the official conducting the search has asserted that he possess a warrant. . . there can be no consent under such circumstances. . ."

On remand, however, the Court of Appeals reaffirmed its initial decision, maintaining Overton could be distinguished from Bumper because a school situation was involved, i.e. the vice-principal had a "right" to search the student's locker which wouldn't exist in a non-academic setting. The matter is now on its way back up to the Supreme Court.

At present, therefore, a principal who has reasonable suspicion a crime is being committed can legally search a student's locker without his consent and without a valid warrant, and the contents can be made available to police for criminal prosecution.

The National Association of Secondary School Principals urges authorities not to make this a common practice, however. "We caution principals against any such searching (of a student's person, desk or locker) except under extreme circumstances, unless permis-

sion to do so has been freely given by the student, the student is present, and other competent witnesses are on hand."

While it is difficult to predict the legal future some calculated hunches may be made in this area. In loco parentis has gone by the board in higher education where it has been firmly established that colleges and universities are not responsbile for policing student morality -- except during actual class sessions -- and only then on the basis of ~~it's being a distraction.~~ disruption of learning. It is inevitable that this interpretation will be made regarding the lower school's range of responsibilities. Already, the lower schools have absolutely no jurisdiction over students' outside activities. No principal or teacher can legally take disciplinary action against a student for his out-of-school participation in such things as public demonstrations, picketing, pamphleteering, protest marches and so on. Even if the student should violate the law, his punishment rests solely with the civil authorities. The school has no right to place him in jeopardy for it.

The concept of in loco parentis may not legitimatize search and seizure, however, anyone who thinks a school building is a privileged sanctuary from the law has been grossly misinformed. Any teacher or principal (or student) who witnesses a crime on school property has the same obligations as a private citizen. He should call the police. The growing concern over drug abuse, rather than in loco parentis, is more likely to serve as a basis for search and seizure in the future.

Hair, Dress and Grooming. The Supreme Court has never faced the question of whether and to what extent school authorities may regulate the appearance of students; however, the Tinker decision is probably a good indication of the direction in which it would go.

The lower courts have generally tended to view the right to wear one's hair and dress as one wishes as constitutionally guaranteed and have usually rejected arbitrary rules concerning student appearance. In most instances there has been an attempt to balance the students' constitutional rights against health and safety consideration.

A sample of litigation in this area includes:

Cash v. Hoch, 309 F Supp 346 (WD Wisc 1970). Temporary restraining order issued on behalf of junior high school students when school authorities were unable to meet the substantial burden of justification required to sustain a rule against long hair.

Crossen v. Fatsi, 309 F Supp 114 (D Conn 1970) struck down school code forbidding "extreme style and fashion" and requiring that students be "neatly dressed and attired" as unconstitutionally vague because its interpretation left too much to the discretion of the school administration and as overbroad because it violated the right of privacy found in the Ninth and Fourteenth Amendments.

Jackson v. Dorrier, 424 F2d 213 (6th Cir April 1970). Upheld a District Court decision sustaining a rule against long hair in the Nashville high school system when the particular students involved, members of a rock group ("The Purple Haze"), were found to disrupt classes by combing their hair and to cause distraction of other students due to their hair length.

Neuhaus v. Torrey, 310 F. Supp 192 (ND Calif March 1970). Sustained a rule prohibiting long hair or beards on male students participating in extra-curricular activities; found such consistent with "the demands of participating in competitive sports."

Breen v. Kahl, 296 F Supp 702 (WD Wisc 1969). Held unconstitutional a school regulation forbidding long hair on male students; noting that length of hair itself didn't present a health hazard or cause disruption of school activities.

There is no precise answer, therefore, to the question of whether students must abide by dress codes. The growing concensus of legal opinion is definitely on the side of not permitting any such codes -- not even when the student body has drawn up its own dress code and endorsed it by majority vote. Fashion and taste are not subject to regulation. Only clothes that are clearly dangerous or disruptive of the learning process can legitimately be disallowed.

James E. Allen, Jr., former New York State Commissioner of Education and later U. S. Commissioner of Education, granted school boards the authority to prohibit only such items as "metal cleats on the shoes which might damage the floors, a type of clothing in physical education classes which unduly restricts the student from participating, long-haired angora sweaters in cooking classes where open-flame gas ranges were used, any kind of apparel which indecently exposes the body or, in sum, any clothing which causes a disturbance in the classroom, endangers the students, or is so distractive as to interfere with the learning and teaching process." Otherwise, each student's choice of clothing is unlimited--not only in New York but in many other states as well.

As for hair length, the U. S. Court of Appeals of the Seventh Circuit has ruled that "the right to wear one's hair at any length or in any desired manner is an ingredient of personal freedom protected by the United States Constitution." In states where the courts take a similar view, school officials who still attempt to impose haircut rules are being treated by the courts with increasing harshness. A judge in Miami recently ordered a high school principal to pay one

of his students $100 in damages --plus another $182 in expenses--for expelling him for no reason except the length of his hair. It was the first known monetary penalty in such a case.

Again, this is an area where informal traditions and surreptitious rulings are more widespread and effective than any law of the land. For example, a sixteen year old who really wants to make the swimming team is told that he must cut his hair since his hair length is cutting down on his speed. Is the youngster faced with an issue of freedom of choice? Does the issue result from an open, written policy which can be countered, or is it embroiled in the school culture and therefore, an invulnerable form of school authoritarianism? The same point was made by U. S. District Court Judge James E. Doyle, who, ruling in a student's favor in a case involving hair length, eloquently summed up the whole students' rights movement: "It is time to broaden the constitutional community by including within its protection young people, whose claim to dignity matches that of their elders."

Due Process in Discipline. Much of the current student rights litigation concerns the means by which school authorities attempt to discipline students. Typically, these cases challenge the right of administrators to suspend, expel or transfer a student without first according him procedural due process.

Most courts have acknowledged the argument that the right to education (which may be inferred from state education laws and the Constitution) is so fundamental, it cannot be taken away without due process of law. Although this is now a fairly well established concept, its dimensions are still far from clear. The courts continue to define "due process" in this field on a case-by-case basis.

It seems fairly clear that a student may not be denied access to a school he otherwise has a right to attend without some sort of hearing. As of June, 1968, eleven states had statutes specifically requiring such. (Welfare Law Bulleting, June 1968, at 18). The hearing probably need not be a full trial of the proportion required in a court of law, but should be more than a mere informal interview. Most courts seem to feel that at least the rudiments of an adversary

proceeding should be preserved. See eg. Dixon v. Alabama State Board of Education, 294 F2d 150 (5th cir), cert den 368 US 930 (1961).

Whether any of the other factors ordinarily associated with Due Process are deemed applicable to students seems to depend largely upon the consequences to the student of the particular disciplinary action proposed. Right to counsel, written notice of charges, right to interview witnesses, etc., seem to be accorded only if "long term" disciplinary action is to be taken, the idea being that school officials should still have some "short term" disciplinary tool they can use "on the spot."

Some recent cases in this area include:

Hobson v. Bailey, 309 F Supp 1393 (WD Tenn 1970). Held a public high school student is entitled to more than a short interview with an administrative official before being expelled for repeated absences in connection with picketing; required that student be given a list of the witnesses against him and afforded an opportunity to present his own defense through oral testimony or written affidavits.

Goldwyn v. Allen, 54 Misc 2d 94, 281 NYS 2d 899 (S Ct 1967). High school senior held entitled to counsel in order to meet a charge of cheating where the consequences could have included denial of a state diploma and certain qualify-exam privileges.

Madera v. Board of Education of the City of New York, 267 F Supp 356 (SDNY), rev'd 386 F 2d 748 (2nd Cir 1967), cert den 390 US 1028 (1968). The Second Circuit held that a student was not entitled to an attorney at a "mere guidance conference," although that conference was to determine whether the student should be suspended for misconduct, transferred to another school, or allowed to return to the school he had been attending.

It is the constitutional right of every American to be assumed innocent of charges against him until proven otherwise in a fair and open hearing. Presumably, this applies equally to students and adults. Both enjoy the right to due process of law, which includes the rights to prior notice, formal charges, representation by counsel, cross-examination of witnesses and appeal of adverse decisions. Minor rule infractions can be handled in a summary manner, but suspension and expulsion are by no means minor punishment. Arbitrary suspensions, which are blithely handed down by officials in scores of school districts, could legally be overthrown in many states if the victims of these decisions went to court over them.

Perhaps even more important than its basic illegality, the denial of due process turns students against democracy--as reflected by the recent Columbia University study that noted that "our schools are now educating millions of students who are not forming an allegiance to the democratic political system because they do not experience such democratic system in their daily lives in the school."

Actually, it is more legally defensible to strike a pupil than to suspend or exclude him without due process. To intimidate

teachers, tough troublemakers often threaten to sue anyone who lays a finger on them, but they usually lose if they really go through with it. Corporal punishment is still tolerated in 49 states. Only New Jersey has statewide statutes expressly forbidding it.

This does not mean, however, that teachers or principals have free license to act like tyrants in Victorian novels who routinely thrashed their wayward pupils. Generally, physical punishment must be appropriate and reasonable. For example, most courts would condone a teacher's lightly swatting an eight-year-old's bottom once or twice after he maliciously hit a classmate with a rock and made her cry; the teacher responded essentially the way the child's own parent might. But to sadistically beat a student into unconsciousness (it sometimes happens) would invite the full fury of the law.

Invasion of Privacy. Only educational data is privileged -- attendance records, test grades, achievement levels and so on. But more and more schools are including in their files sensitive and intimate information about the student's health, his family background, his religion, his ethnic origins, his patriotism, his parents' income, delinquency reports, results of psychological and psychiatric evaluations, and, in many cases, unverified accusations made against

the student's best interests. In that case, there is an invasion of privacy.

A conference of educators and legal authorities was convened by the Russell Sage Foundation to establish guidelines for the protection of students' rights regarding records. Their final report included these specific recommendations:

- No information should be collected from students without the prior informed consent of the child and his parents.
- A student's permanent record, often preserved these days on computer tapes, should include only strictly educational data. The more personal information contained in his temporary file should be systematically verified, periodically reviewed, and thrown away as soon as it has outlived its usefulness.
- Parents and students have the right to challenge the accuracy of any information included in school records, and to employ counsel to present evidence and to cross-examine witness in the process.
- Parents should be periodically informed of the content of their children's records and their right of access to them.
- Information in school records may not be divulged, in any form, to anyone other than a member on the school system with a legitimate need for it, except with written consent from the student's parents specifying what records are to be released, and to whom.

The advice now being given directly to students and parents is to assert this right to know. Handbooks are now quite common throughout the United States. A typical example is the following:

"Your Right to See Your Child's
School Records

These records can affect your child's entire life. If a teacher or other school official has written a comment which is harmful to your child, everyone in the school system can see it and you should have a chance to see it too, and to protest if it is not true. Ask your child's teacher for an opportunity to examine the records and to make a copy if you wish. If the teacher refuses, go to the school principal and if this fails, see a lawyer. You should not be required to give any reasons for wanting to examine the records other than that you are a parent or guardian.

Your Right to Challenge
Incorrect Records

If any of the information in your child's school records is not true, you may be able to sue the school system and the teacher involved for slander or libel. Teachers have a moral and professional duty not to needlessly defame and injure the reputation of students or their parents. Short of a lawsuit, you should go with a friend to the teacher and principal, show the information is not true, and demand that the record be corrected. If school official refuse and you think you can prove that the information is false, then you should see a lawyer."[1]

This is merely an example from one parent handbook; it would be an underestimate to suggest that except for some remote areas, some group is generating this kind of awareness in most towns and cities throughout the United States.

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[1] Make the Public Schools Work for You: A Handbook for Parents. Prepared by Freedom Through Equality, Inc. 152 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 p. 23.

A second kind of document which is becoming quite commonplace are those directed at junior and senior high school students. These tend to include both educational rights (e.g. right to participate in curriculum decisions) as well as legal rights. Many of these documents are quite positive and attempt to propose formal, open procedures in place of the traditions which have been used in the past. Most of the handouts aimed directly at students also tend to summarize the existing laws of the particular state. One of the most common topics in these documents deal with suspension.

> "Administrative Suspension. A student may be suspended for the following reasons only: 1) assault on school personnel; 2) an unprovoked attack on another student; 3) assault with a deadly weapon; 4) possession of a deadly weapon; 5) arson or attempted arson; 6) extensive damage to school property; 8) sale of dangerous drugs. [1]

The distribution of information on students rights is being directed primarily at the public, parents and students. Very little is, at present, in the professional education literature -- and nothing in the literature dealing with the preparation of teachers and administrators. Our actions

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[1] Education Committee. Students' Rights and Responsibilities Manual for the San Francisco Unified District. Human Rights Commission. San Francisco: 1972 p. 5.

seem to say: "We can learn to educate youth best by being nice, kind people who do not get excited or overly involved with either the basic value system of America (i.e. Freedom by law.), and if we ignore the most effective method of instruction -- the actual daily living of youngsters in schools."

Recognizing the brevity of this overview regarding students' rights, the discussion which follows deals with how teachers may be prepared to work in free schools and to educate youngsters for responsible participation in a free society.

The Rights of Students in Programs of Teacher Education

While it might appear as simple logic to contend that all the foregoing rights are applicable to college students (plus others, since most college students have reached the age of majority and can vote, drink, establish credit, etc.), this is not the case. College students preparing to teach are entering a public-service profession and cannot and should not be guaranteed successful completion of teacher education programs in advance. The professional component distinguishes their college careers from liberal arts and humanities students and makes their rights akin to those seeking simultaneous education and licensure in medicine, law, engineering, architecture and other professions. Without a lengthy treatise on the nature of professionalism, the end result of this argument is that the general welfare, that is the public's right to quality service, is a greater one than the individual's right to practice a profession. The guardians of this general welfare are various state certification agencies who, in turn, administer the

collective will of the practitioners. While licensure is a state bureaucratic function, it is the various professional associations who define the minimum content required for practice in a particular profession.

The issue of rights is complicated by the fact that professional preparation is accomplished in colleges while the future practitioneers is simultaneously a college student. Professional schools which are segregated (e.g. law, engineering medicine,) are clear about this distinction. Few, if any, students in these segregated institutions are conscious of their students' rights since the whole culture of the institution is geared to entrance into the particular profession. The result is that these ~~schools~~ students are selected, failed or passed on professional criteria. "Student relevance" in the curriculum is never an issue since students are not assumed to begin with any right to prepare for a particular profession; neither is meeting their interests deemed to be of much importance. They are assumed to harbor internal motivations to master the objectives set forth by the experts who establish the professional curriculum.

This contention that professional students act more like vocational trainees than college youth, is supported by the data. Few, if any, college students in professional schools have ever participated in the students' rights movement, the anti-war movement, or the civil rights movement. They see themselves as future doctors, lawyers, etc. first, and as college students second.

The notable exception to the foregoing is, of course, the field of education. Here, there is no, or little, separation between departments or schools of education and the main body of students. Many, perhaps most, future teachers do see themselves as college students. They tend more and more to identify with the arts and humanities students. The data on college youth indicates decreasing significant distinctions between education students and the general body of students. On some campuses, such as UWM, the education students are among the most activist, socially conscious and students' rights oriented.

The decrease in vocationalism among education students (this is helped considerably by the shrinking job market.); the socio-

economic similarities between education and other college student groups; the more integrated facilities education schools usually share with arts and science facilities; and the fact that general education is the basis and an integral part of subsequent professional education, all serve to blur the rights of future teachers and those of college students.

The discussion which follows, therefore, is an attempt to delimit the rights of college students in programs of teacher education and to clarify a relevant body of guidelines that stands between the very broad rights of all college students on the one hand and the very narrow rights of pre-professionals in segregated training institutions.

I. The Right of Equal Opportunity. The right to try to become a teacher should not be abridged. Obviously, the profession, through the experts who design the teacher education curricula and the faculties who administer them, can and should exert great control over student passage through programs. But these professional responsibilities are intended to keep standards high

and not to preclude the initial entry of students. Equal opportunity in educational terms refers the right of anyone to enter and to be given a fair chance to prove that he can learn what must be learned. Since we still have no reliable criteria which predict which college students who apply for teacher education programs will be successful with children and youth five, ten or fifteen years later, we must remain relatively open regarding admission. Only the grossest physical, emotional, or intellectual qualities can be safely used at this time. There is a great misuse of grade point averages, speech and English proficiencies which are not only spurious, arbitrary gradations but which have no demonstrable relevance to what we know about the attributes and behaviors of effective teachers.

The college and university which cuts down the numbers who can prepare for teaching on the basis of job prospects, is also guilty of abridging this student right for equal opportunity -- unless that university also cuts down on budgets for its law school, agriculture school, etc., on a similar basis and in similar

proportion. If public institutions of higher education are to respond to job markets on an annual basis, they must do so across the board. Is the right of a student to study law, with no job prospect, a higher right than the student who chooses to study education with a similar lack of specific opportunity?

Equal opportunity in teacher education has a two-pronged thrust; to prevent the professional faculties from not giving all a fair chance to begin and to prove themselves in the course of study and second, to prevent the regents and other budget makers from singling out education as the only schools to make responsive to fluctuating conditions in the economy.

Teacher education programs can implement policies in other ways which support the equality of opportunity concept. Members of minority groups should be recruited. Sexual biases which deter men from early childhood and women from administration should be eliminated. Personal life styles, political activisim are also, of course, irrelevant. Age, particularly the discrimination against adults in preservice programs, is real but rarely dealt with. The

content of the courses should stress human relations, cultural pluralism and the equality of opportunity for children and youth which future teachers need as basic preparation. The processes by which the training programs are actually conducted should demonstrate and support the rhetoric of what is taught in formal classes and texts. Naturally, there are numerous other ways to implement equal opportunity in teacher education. The basic responsibility of the profession (i.e. the faculty, practicing teachers, expert theoreticians and researchers) is to clearly specify the goals of what is to be learned in order to demonstrate successful completion of teacher education programs. This professional clarity is prerequisite to providing all students with equal opportunity. To be admitted, to study for varying periods, in a variety of ways -- provided one can demonstrate he has learned what must be learned -- is the essence of the right of equal opportunity.

II. The Rights of Freedom of Assembly and Association. In the 1950's it was necessary to reassert the rights of individuals to associate freely and to not be "guilty" by virtue of such association. This principle now needs reaffirmation. While many

public groups and individuals are no longer charging about rooting out Communists, they are cracking down just as hard on homosexuals, pot-smokers, feminists and social activists.

Future teachers should never need any reason to prove they do not associate with any person or group. The right to participate in controversal groups might, on some campuses, now be reversed from situation in former times. For example, students have the right to not participate in sensitivity training because of their religious beliefs. Included in this right is the more fundamental choice to not participate in any group at all. Being hip, a joiner, a non-conformist, a straight, or an isolate are the personal preferences of students and beyond the limits of punishment or reward by those who offer the teacher education program.

The most likely conflicts which occur in this area have to do with assemblies which meet at the precise times students are required to be in classes. Here, the student can be required to make up the time he misses by virtue of his participation in a non-college activity. For example, if a given number of clock hours or days of student teaching are required and the student chooses to support a strike against the war, he cannot be punished for his political

pursuasions, yet, he can still be required to complete the required period of time in direct experiences.

III. Petition. The right of petition for a redress of grievances has become an integral part of university tradition. The current additions to this body of tradition is the recognition that students participate in the committees that hear these petitions and that students participate in the drafting of the rules in the first place. For example, if a student is prevented from graduating because he owes parking fines for using the faculty lot he should have peers as well as faculty and administrators who hear his petition. Further, there needs to have been student input into the original designation of parking in a faculty lot as a "crime" worthy of this penalty in the first instance.

The foregoing is an example of the student in his role as a college student. As a future teacher he should also be able to petition appeals committees composed of practicing teachers, if his misconduct relates to professional practices. If the "crime" were not parking but refusing to accept the evaluation of a cooperating teacher under whose supervision he had student taught, then professional practitioners (teachers) should participate with

the faculty and students in this decision-making.

The dual role of college student and future teacher must always be considered. To treat all student demands as irrelevant to future teaching practices would be as illogical as responding to all student demands as if they directly effect future professional performance. Much clarification ~~has to be done~~ is required regarding precisely which petitions are primarily centered in the life of college students and which relate to future practice. One thing is certain, college students and practicing teachers need to be represented -- and with power equal to faculty -- on what are usually faculty and administration dominated appeal committees.

IV. Due Process and Equal Protection. The essential ingredient here is that all rules, regulations and policies which pertain to preventing the student from completing the program, are written in understandable form and available as public information.

Equal protection in teacher education goes beyond the common concerns of discrimination on the basis of race and religion.

Age is the most common basis for discriminatory practice; adults are not accepted as readily, their transfer credits are ignored or designated as expired. The whole teacher education culture is based on 18-22 year old college students. Adults are just not supposed to be there -- in lines, in classes, in libraries, student teaching; they don't fit the tacit role expectation of many narrow-minded faculty who perceive themselves as only working with youth.

While this discrimination is widespread in teacher education, it is even more unfair in the admission to doctoral and other advanced programs. In direct opposition to state laws, "older" people (beyond 40), are told they have been excluded for other reasons when the actual concern was their "advanced" age. As in all other instances of enforcing equal opportunity, perpetrators of such practices are sufficiently sophisticated to not admit the real reasons for their exclusion.

Sex is another widespread basis of discrimination in teacher education. Men are not encouraged to participate in early childhood or women in areas such as science or math education. This is done indirectly and in contradiction to our rhetoric.

In sum, equal protection in teacher education includes all the usual areas of discrimination encountered in the society generally, plus these others of age and sex. The most difficult area to pin down is the nebulus one of "nice person," or "people who fit in" or people with the "right personality." The issue of extending equal opportunity to people who may be abrasive, contradictory, espousers of unpopular causes, not pretty, "bad" dressers, physically lame, poor speakers, etc. is the essence of equal opportunity in teacher education and in this area we have not even scratched the surface. There is, on many campuses, a "gentlemen's agreement" operating, which is quite clear about what future teachers should be like.

V. Speech and Press. In addition to the usual interpretation of these rights there is an additional set of complexities in teacher education. Schools of Education must generally "get along" with public schools in order to be certain that their students will be placed in these schools for practice teaching experiences. "Getting along" with public schools in behavioral terms means not criticizing them publicly. This is an expecially sensitive time since public schools are not looking for new teachers and might

easily be tempted to cut off their student-teaching relationship with any School of Education that becomes a source of trouble; that is, a source of criticism.

Students publish papers, appear in public forums and give opinions which are and should be questioning of current practices. In addition to the usual newspapers and public assemblies, there is something even more critical which must be done to protect students and teachers in this area; the freedom to speak freely in teachers rooms and other places where colleagues gather. Gossip and rumor are used against student teachers and beginning teachers. This is also a form of getting back at a School of Education whose innovative programs may threaten a public school with change. In teacher education, therefore, freedom of speech and press is much more sensitive than in normal usage and applies to the professional freedom to discuss all issues in an academically free environment. Many students feel their Schools of Education and the public schools in which they practice are not, at present, such academically open places and that far from "letting all the flowers bloom," there are lines which must be learned and followed.

VI. The Right to Dissent. Growing out of the foregoing rights to speak, publish and assemble freely is the obvious need to dissent. Again, in a field where there is a shortage of jobs, there are a multitude of ways in which dissent is punished. Not only are there no jobs but no interviews for those who dissent too loudly or too accurately.

Professionally, there can be no hope for change and improvement if dissent is stifled. Not only is this a right, it is a professional need. The present practice of sweeping critics under the rug by never hiring them, should be completely turned about so that a criterion for employment should be the applicant's ability to initiate and participate in change.

VII. Freedom of Religion. This should be extended to include religions not normally considered by the traditionalist view that only the Judeo-Christian ethic represents America. All the great religions, plus no religion, plus all the cults, sects and so-called "strange" religions should be actively recruited into teaching. Such a broadening of religious diversity is the surest way to enhance the goals of cultural pluralism and to help each subculture of

children and youth develop his identity and potential to the fullest. Christmas and Hannukah are a poor fare for future teachers of children who are Indians, Muslims, Zen-Bhuddists, Jesus freaks, atheists, revivalists, members of a spectrum of store-front creeds, and supernaturalists. Nothing is so indicative of middle-class tyranny as the narrowness with which we have viewed religion in the preparation of teachers.

VIII. Person, Property and Privacy. These areas are becoming more fully recognized as college youth are viewed as and treated as adults in their living and personal activities. In teacher education it is particularly important to protect these rights since they can so easily be used against individuals without their knowledge. The "simple" things called fron an application such as marital status, hobbies, etc. which seem so inocuous should be reconsidered in the light of this question; Is this something we really need to know in order to decide whether this person will be an effective teacher? If so, how does this information relate to his practice?

IX. Right Against Self-Incrimination. We are all recognizing that former 'experiences' (e.g. with the law) are not necessarily bad.

Governors and college presidents now boast that they were arrested in civil rights demonstrations. We are, generally, becoming more cosmopolitan regarding the use of drugs and personal sexual behavior. In all areas, however, schools remain a bastion of traditional views for a very simple reason. Annual school budgets are voted down at a rate of 4:1. Any public criticism is a direct danger to the school's economic survival. A similar situation exists in public universities where state legislators are cutting into School of Education budgets. Any issue involving a faculty member or potential faculty member is a source of great consternation to the administrators of these institutions. In such an atmosphere of dread and fear of any public criticism, it is especially vital to protect individuals from self-incrimination. As bizarre and unbelievable as it now seems, a high school teacher in the community where I reside was recently "tried" on the stage of the high school auditorium on the charge of having "touched" a few of the high school boys. He had no choice but to "testify" to this packed house conducting a rump trial. What the Gallup polls or the media now report as common American values (e.g. divorce, a belief in evolution, the rights of consenting adults, etc.) are still a far-cry from the

typical American school culture. At the heart of this authoritarianism is the denial fo the right of the individual against self-incrimination.

X. Trial by Jury of Actual Peers. This is the most difficult right to parallel for teacher education because of the duality of roles described previously. Is the individual a college student, in which case his peers are a random selection of any other college students, or is he a future teacher and a peer to classroom practioners. It seems most reasonable that some "offenses," within the egis of the college, would require his appeals being heard by other students, while "offenses" in the public schools require hearings by teachers. Such distinctions are still to be made.

The great injustice in this area is that, on many campuses, the students are a lot narrower and more punitive than faculty. Giving students the right to peer hearings will often result in many more harsh judgments. My contention (hope) is that this will only be true for a time and that if we really involve students and teachers, they will soon learn their power is authentic and will ultimately be most just and most humane regarding their peers.

Bill of Rights
For Future Teachers

Rights discussed in previous sections do not all directly support this Bill of Rights for future teachers. Instead, the legal rights of children and the academic rights of college youth serve as a setting for justifying the specific rights of future teachers. How can teachers be educated to prepare free men and women if they themselves are not the result of a free, open, quality education? How can teachers be prepared to teach children and youth to be constant questioners if they themselves are not persistent, insightful questioners? How can independence, self-reliance and positive feelings of self-worth be taught youngsters if teachers do not model such personal behaviors? How can youth be taught to work within the system to change it, if their teachers lack such commitments and abilities?

As a teacher educator, it is my contention that our preparation programs have more frequently been "training" rather than "education" and that this training has programmed and rewarded these future "teachers" who 1) do not seriously question their college program of preparation,

2) do not seriously question the public school programs in which they student teach, 3) carefully follow directions from catalogues, clerks, faculty and administrators, 4) personally conduct themselves (i.e. dress, speech, conduct, expressed values,) in ways intended to imitate and please faculty and public school personnel, 5) do not learn skills of changing the school people and programs in which they will ultimately serve as teachers, 6) do not experience their full rights regarding grades, open evaluations, control of their records, and due process in relation to their admission and completion of program.

The rhetoric should finally be ~~layed~~ laid to rest in favor of what we actually know. Youngsters can learn basic skills from technicians or even carefully prepared materials. Basic life commitments, however, are learned most effectively by "catching," through modelling behavior, the values of teachers and others in the schools. This means practicing teachers who do not sneak away after hours to talk a good game but whose day-to-day behavior demonstrates the free spirit in a free society.

While many student rights should be introduced into teacher education, I have limited this initial listing to ten. Hopefully, many teachers and students will become involved in lengthening this list.

1. Right to be Admitted. We still have not identified the factors which will predict which students will become the most effective teachers. There is no scientific basis for excluding anyone on the basis of grades, speech or English proficiency, or any of the other common criteria now in use. Every student has the right to be admitted and to try to demonstrate that he can learn and perform the requirements. Students who do not quit should be failed or dropped only after at least one year of trial study--which includes direct experiences with children.

Undergirding this right is the right to not have a whole program dropped by the university -- for the reason that there is no job market. Unless a university is willing to cut programs in law schools, nursing, architecture, agriculture, engineering and every other professional school where there are not guaranteed jobs, it is discriminatory to use this criterion for teachers but not for others. The only caution necessary is that the knowledge about present job markets is public information and available to students before they enroll. The decision to then become a teacher is an individual one.

2. Right to Academic Freedom. There is no general agreement among teacher educators regarding much of the basic content in teacher education.

Learning theorists range all the way from Skinner to Piaget, to Rogers; school learning experts differ on the implications of these approaches to public education; social scientists' advice ranges from Moynihan to Clark, to Illich. Even within the narrow range of teaching techniques we have a spectrum from behavior modification to open education. The result of this diversity is that academic freedom can best be preserved by having alternative programs available to students and not requiring only one orthodoxy for all. This right will be most feasible in large universities. It will be threatened in state colleges which tend to have one program for all, or in small private colleges where there is limited staff. Academic freedom, the right of the student to dissent and question, becomes especially important, in institutions with only one teacher education program.

3. Right to Information regarding Alternative Programs. Students frequently are not aware of all their options until it is too late for them to make changes in their program commitments. Students who work, or transfer in, or adult students who are not adequately advised, frequently miss opportunities for new, or experimental programs. Freedom exists only where there is a knowledge of one's alternatives.

Many students become knowledgeable about the machinations of the

university bureaucracy (they develop "schoolsmanship") and thereby gain greater alternatives and independent decision-making power, than students who are not informed. Every college requirement and rule has ways of being circumvented, waived or changed.

The accuracy of these contentions can be supported or rejected by examining the new, or alternative, or experimental-demonstrations on a given campus. Were all students provided with equal information regarding their alternatives?

4. Right to Choice in Instruction. Typically, some classes are lectures, smaller group discussions, or direct experiences. All students experience the same method for a given period. Research indicates, however, that students differ in their styles. Some learn best from lectures, others by readings; some learn best by direct experience, others by simulation; some learn best in small group discussions, others by a personal conference with a supervisor.

These processes by which one learns to teach are as important as the content of the courses Students have the right to choose the learning style that fits them best In addition to learning more, these experiences will motivate them to provide youngsters with similar options and controls.

5. Right to Individualized Time Requirements. In addition to alternatives in content and process, we know that individuals learn at different speeds. Future teachers should be able to finish all requirements on an individual basis. Colleges are locked into quarters, semesters and summer sessions. Students should not be penalized for such bureaupathology.

Obviously, meeting differences among individuals will require adjusting the system to the students--which is what universities should be doing anyway. Once again, individualizing the time requirements will not only increase efficiency, but will be a likely way to prepare teachers who will do the same with children and youth.

6. Right to Prior Knowledge of Course Goals. In order to choose courses students need more than the teacher's name and a catalogue blurb. Their decisions should be based on what the instructor's intentions are and what they might end up with (i.e. learning objectives) if they undergo the experience. Such predictive knowledge will help to get college faculty into more rigorous condition. It will require faculty to first think through what they plan students will learn on a much more careful

basis than has been done heretofore. Under the guise of academic freedom many faculty are quite sloppy about preparing their syllabi. Since we know that teachers with unclear objectives cannot be as effective as teachers with well-defined ones, this student right will also help faculty. The open publication of the instructor's objectives of each course, or experience, will also have a salutory effect. Faculty will be reluctant to publicize less significant goals.

The importance of this right is that it connects with and supports students' rights to individualize their time, since knowing what and how much has to be learned, will permit students to plan their schedules better. Knowing goals will also enable students to ask for exemption exams. As in the other rights, it is likely to get students to ultimately treat children and youth in similar fashion.

7. Right to Exemption and Credit Exams. Once there is public knowledge of course goals, students should be free 1) to ask for a waiver by showing previous experience (e.g. twelve years of private study in piano, swimming, foreign language, etc.) should permit a particular course to be waived in an individual student's program; 2) to ask for an exemption

examination if he believes he can already pass a test dealing with a course's objectives; and 3) to ask for credit for a particular course if he demonstrates proficiency in the stated goals of the course. The difference between #2 and #3 should be that #2 refers to general education and #3 refers to professional training. For example, if a student knows enough sociology to pass the final exams his requirement should be waived and he should be advised to take another course; the assumption here is that a given number of credits of "new" material adds up to one's general education. In professional areas, particularly skills which can be sequenced in difficulty, the student should not only be able to take and pass the exam but to receive credit for what he has achieved and to move immediately to the next level of the skill.

In teacher education the major obstacle to this right are the direct experiences. This means that teachers of many years in private schools have the same student teaching as gifted, dull, interested, or unconcerned student teachers who have never taught. In spite of the obvious difficulties, methods for differentiating the requirements of direct experiences must be introduced. It should be possible for some students to demonstrate in one week what other students take one year to perform.

8. Right to See One's Records and Evaluations. This is the most critical of all the students' rights. Many are prevented from employment and educational opportunities by remarks in their records which they are unaware of but which may be permanently fixed as lifelong obstacles. Not only would it be more just to do this, but it would certainly be more educational, since students could improve upon what they were criticized for and then be able to remove or overcome such reported weaknesses.

In addition, students should be able to file their own self-evaluations and recommendations in their own folders. It should go without special mention, but malpractices require restating that these records should be sent to employers and others on the students' request only.

9. Right to Work with Able and Willing Supervisors and Teachers. Students have the right to be free of courses, or any requirements, taught by faculty who are drafted for the job. Many times, an assignment "must be" given to a faculty member who does not have a full load. This is a violation of the students' right to quality. Tenure laws may prevent faculty from arbitrary dismissal; they do not guarentee him a full-time post--particularly if he then must teach in areas for which he is not qualified.

The major thrust of this right is to ensure that students have cooperating and supervising teachers who want to work with them. It is common practice--although not publicly admitted--that many (perhaps most) student teachers are assigned to cooperating teachers who were simply required by the school principals to "Take a student teacher, it's your turn."

Student teachers' rights in this area can be specified still further. The cooperating teacher should be 1) an experienced and successful teacher 2) willing to accept help and supervision at working with another adult and 3) willing to open, accept and work with the particular student teacher assigned.

Once these three conditions have been met, the student teacher should have some choice in selecting a cooperating teacher. This does not mean an unlimited number of vetoes but one or two refusals would be a marked improvement over present conditions which usually give students no choice.

All of the above rights should be applied to college supervisors who visit students in their school practice situations. Students' should have the right to veto an incompatible supervisor being assigned. Such

supervisors should be 1) experienced and successful, 2) willing to work with students in direct experiences, 3) willing to work with the particular students assigned.

10. Right to Participate in Program Evaluation and Change. As soon as students become graduates they should have an increased voice in criticizing and making recommendations regarding program improvement. As they become employed and gain teaching experience they become professional practioners and the colleagues of The School of Education faculty. At this point (i.e. practitioners) former students should have an equal decision-making authority as college faculty regarding the administration and content of teacher education programs.

It is not possible to rank these ten rights since they are all basic. As a first order of business, however, #9 and #8 should be implemented most urgently.

Prospects

Through a strange twist in the American values system it has become "good" to be conforming, obedient and passive and "bad" to openly question existing systems, to directly refuse to do what others do and to be active about living by one's own beliefs. This turnabout in the popular conception of what a free citizen should value is, in part, the result of an educational system which is custodial rather than change oriented. Simply stated, the value of making "good" boys and girls has dominated the value of making "free ones."

This monograph is an effort to resurrect the concern for educating the free man in a democratic society and to undergird that concern with the laws that can guide this rededication. Some contend that the hope of making freedom the most prominent goal in the American school is weakminded; that schools are merely a locked-in factory model for producing the human resources demanded by the larger society. Such pessimism leads to abundant but useless rhetoric as the only form of action. Somehow, and probably in spite of the dominant schooling pattern, an increasing minority of students and educators are learning to question and to actively seek the rights that are natural and guaranteed to all our citizens. In addition, there is growing evidence that some institutional changes are possible and do result from this growing awareness.

Predicting the future is an imprecise pasttime. Yet, it seems likely that student, faculty and public consciousness in

this area of students' rights will continue to grow. It also seems likely that the immediate future will see an increase in open but orderly disputation among the groups involved in the educational establishment. One possibility is that conflict over students' rights will be dealt with as in the past; as extraneous to the educational enterprise--"problems" to be dealt with administratively so that "we can get on with the business of education". The more fruitful possibility and the one which will nurture and sustain our democratic society, will involve bringing all the challenges of the individual vs. the system <u>into</u> the educational program as an integral essence of the curriculum.

Mindless obedience to tradition is inimical to both the educational goal of developing the individual to his fullest potential and to the needs of a democratic society. The very best assurance we have for our society's survival are the adaptations and solutions to problems generated by our "deviants".

> What we need now in this nation most of all is a constant flow of new ideas... We cannot obtain new ideas until we have a public opinion which respects new ideas and the people who have them. Our country has surmounted great crises in the past not because of our wealth, not because of our rhetoric, not because we had longer cars and whiter ice boxes and bigger television screens than anyone else, but because our ideas were more compelling and more penetrating and more wise and more enduring.
>
> John F. Kennedy